NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

**Am-Gard, Inc.** *and* **United Government Security Officers of America, Local 50.** Cases 27–CA–17053–2, 27–CA–17161, 27–CA–17230, 27–CA–17234, 27–CA–17240, 27–CA–17260, and 27–CA–17278

June 13, 2001

# DECISION AND ORDER

# BY CHAIRMAN HURTGEN AND MEMBERS TRUESDALE AND WALSH

Upon charges filed by the Union, the Acting General Counsel of the National Labor Relations Board issued a consolidated complaint on February 28, 2001, against Am-Gard, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, the Respondent failed to file an answer.<sup>2</sup>

On April 17, 2001, the Acting General Counsel filed a Motion for Summary Judgment with the Board. On April 19, 2001, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

# Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14

days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated March 20, 2001, notified the Respondent that unless an answer was received by March 27, 2001, a Motion for Summary Judgment would be filed.<sup>3</sup>

In the absence of good cause being shown for the failure to file a timely answer, we grant the Acting General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

# I. JURISDICTION

At all material times, the Respondent, a Pennsylvania corporation, with an office and place of business in Denver, Colorado, has been engaged in the business of providing protection and guard services for the General Services Administration at various Federal facilities. The Respondent, in conducting its business operations described above, annually provides services valued in excess of \$50,000 at points and places directly outside the State of Colorado. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

# II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their names, and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Ed Boczar President
Elaine Alker Vice President
Mike Adams Contract Manager
Allen Jones Lieutenant

Further, during the period from about August 23 to December 1, 2000, Andy Fritz, insurance agent, was an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following acts and conduct have occurred at the Respondent's facility. On about November 30, 2000, the Respondent, by Andy Fritz, told employees that the Re-

<sup>&</sup>lt;sup>1</sup> The charge in Case 27–CA–17053–2 was filed on September 19, 2000, and amended charges were filed on September 25, November 14, and December 13, 2000. The charge in Case 27–CA–17161 was filed on November 14, 2000. The charge in Case 27–CA–17230 was filed on December 20, 2000. The charge in Case 27–CA–17234 was filed on December 22, 2000. The charge in Case 27–CA–17240 was filed on December 27, 2000. The charge in Case 27–CA–17260 was filed on January 12, 2001. The charge in Case 27–CA–17278 was filed on January 26, 2001.

<sup>&</sup>lt;sup>2</sup> The original complaint in Case 27–CA–17053–2 issued on December 15, 2000. The Respondent did not file an answer to that complaint. Before the consolidation of the above captioned cases, the Region, by letter dated January 16, 2001, advised the Respondent that unless an answer to the complaint in Case 27–CA–17053–2 was received by January 23, 2001, a Motion for Summary Judgment would be filed.

<sup>&</sup>lt;sup>3</sup> The Acting General Counsel's motion asserts that, in addition, on about March 26, 2001, the Region informed the Respondent's president, Ed Boczar, by telephone, that although the Respondent had answered the various charge allegations during the investigation of the underlying charges, it was still necessary for the Respondent to file an answer to the consolidated complaint that either admitted or cenied each complaint paragraph.

spondent's health care coverage offered to employees was being dropped because of the Union. On about December 18, 2000, the Respondent, by Allen Jones, interrogated employees about whether they were going to strike and threatened employees with termination if they went on strike. On about December 19, 2000, the Respondent, by Allen Jones, threatened an employee with discharge by informing him that he must turn in his uniform, equipment, and identification card if he was planning to go on strike the next day. On about December 26, 2000, the Respondent, by Mike Adams, induced an employee to abandon the strike by telling him that if he did not return to work his training agreement would be enforced and he would be required to pay the Respondent \$1500.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All full-time and part-time security officers employed by the Employer to provide protection/security services within the State of Colorado pursuant to or under General Service Administration (GSA) contracts; BUT EXCLUDING all managerial employees, professional employees, office clerical employees, supervisors as defined by the Act and all other employees.

On August 7, 2000, the Union was certified as the exclusive collective-bargaining representative of the unit. At all times since August 7, 2000, the Union, by virtue of Section 9(a) of the Act, has been the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On about August 9, 2000, the Union requested in writing that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since about August 9, 2000, the Respondent has failed and refused to bargain with the Union as the exclusive collective-bargaining representative of the unit. Since about August 9, 2000, the Respondent has failed and refused to meet and bargain with the Union at reasonable times, and has failed to designate a negotiator with requisite authority to engage in good-faith negotiations with the Union.

On about September 21, 2000, the Respondent distributed to the unit a field service manual containing a code of conduct, a dress code, standing orders, disciplinary measures, and a grievance procedure.

On about October 16, 2000, the Respondent implemented a training agreement requiring new employees to agree to reimburse the Respondent the full costs of train-

ing if they were terminated or resigned within their first 6 months of employment.

On about November 30, 2000, the Respondent discontinued its health care program that had been implemented on about August 23, 2000.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit, and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in the conduct described above without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct and the effects of this conduct.

On about October 16, 2000, the Respondent, by Mike Adams, bypassed the Union and dealt directly with its employees in the unit by soliciting employees to enter into individual training agreements requiring new employees to agree to reimburse the Respondent the full costs of training if they were terminated or resigned within their first 6 months of employment.

On about January 23, 2001, the Union, by letter, requested that the Respondent furnish the Union with the following information: (1) "A quarterly breakdown of the number of pay discrepancies submitted by Am-Gard hourly employees for the last two years;" and (2) "The total number of overtime worked in the two years by quarter." The above information requested by the Union, to the extent it relates to the unit, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

Since about January 24, 2001, the Respondent, in writing by Elaine Alker, has failed and refused to furnish the Union with the information requested by it.

At various times from August 28, 2000, to January 3, 2001, the Respondent and the Union met for purposes of collective bargaining with respect to wages, hours, and other terms and conditions of employment of the unit, and during that time period, the Respondent withdrew various proposals that had been tentatively agreed to by the Respondent and the Union.

# CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act. In addition, by the conduct set forth above, the Respondent has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act. The Respondent's unfair labor prac-

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tices affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order the Respondent to recognize and bargain in good faith with the Union as the exclusive collective-bargaining representative of the employees in the unit and, if an understanding is reached, to embody the understanding in a signed agreement. In this regard, we also shall order the Respondent to meet and bargain with the Union at reasonable times, and to designate a negotiator with requisite authority to engage in good-faith negotiations with the Union. Further, we shall order the Respondent to place back on the bargaining table various proposals that had been tentatively agreed to by the Respondent and the Union, but which the Respondent had withdrawn.<sup>4</sup>

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

In addition, we shall order the Respondent to provide the Union with the information it requested on about January 23, 2001.

Further, having found that the Respondent has violated Section 8(a)(5) and (1) by unilaterally (1) distributing a field service manual on September 21, 2000, (2) implementing a training agreement on October 16, 2000, and (3) discontinuing its health care program on November 30, 2000, we shall order the Respondent to rescind the field service manual and the training agreement, and, at the Union's request, restore the health care program. We also shall order the Respondent to make unit employees whole for any losses they may have suffered because of the Respondent's implementation of the training agreement, such amounts to be computed in the manner set

forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

In addition, we shall order the Respondent to make the unit employees whole by reimbursing them for any expenses ensuing from the Respondent's unlawful discontinuance of the health care program, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.

#### **ORDER**

The National Labor Relations Board orders that the Respondent, Am-Gard, Inc., Denver, Colorado, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to bargain with United Government Security Officers of America, Local 50, as the exclusive collective-bargaining representative of the employees in the following unit:
  - All full-time and part-time security officers employed by the Employer to provide protection/security services within the State of Colorado pursuant to or under General Service Administration (GSA) contracts; BUT EXCLUDING all managerial employees, professional employees, office clerical employees, supervisors as defined by the Act and all other employees.
- (b) Failing and refusing to meet and bargain with the Union at reasonable times.
- (c) Failing to designate a negotiator with requisite authority to engage in good-faith negotiations with the Union
- (d) Failing to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.
- (e) Withdrawing bargaining proposals tentatively agreed to by the Respondent and the Union.
- (f) Distributing to the unit employees a field service manual containing a code of conduct, a dress code, standing orders, disciplinary measures, and a grievance procedure, without prior notice to the Union and without affording the Union an opportunity to bargain with it with respect to this conduct and the effects of this conduct
- (g) Implementing a training agreement requiring new employees to agree to reimburse the Respondent the full costs of training if they were terminated or resigned within their first 6 months of employment, without prior notice to the Union and without affording the Union an

<sup>&</sup>lt;sup>4</sup> This remedy is designed to restore the status quo ante, and is not intended to require agreement to any specific bargaining proposal nor the making of a concession within the meaning of Sec. 8(d) of the Act. See, e.g., *Mead Corp.*, 256 NLRB 686 (1981), enfd. 697 F.2d 1013 (11th Cir. 1983). See also *Health Care Services Group*, 331 NLRB No. 49 (2000).

opportunity to bargain with it with respect to this conduct and the effects of this conduct.

- (h) Discontinuing its health care program that had been implemented on about August 23, 2000, without prior notice to the Union and without affording the Union an opportunity to bargain with it with respect to this conduct and the effects of this conduct.
- (i) Bypassing the Union and dealing directly with its employees in the unit by soliciting employees to enter into individual training agreements requiring new employees to agree to reimburse the Respondent the full costs of training if they were terminated or resigned within their first 6 months of employment.
- (j) Telling employees that health care coverage offered to them was being dropped because of the Union.
- (k) Interrogating employees about whether they were going to strike.
- (l) Threatening employees with termination if they went on strike.
- (m) Threatening employees with discharge by informing them that they must turn in their uniforms, equipment, and identification cards if they planned to go on strike.
- (n) Inducing employees to abandon the strike by telling them if they did not return to work their training agreements would be enforced and they would be equired to pay the Respondent \$1500.
- (o) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, meet and bargain at reasonable times with United Government Security Officers of America, Local 50 as the exclusive representative of the employees in the unit set forth above concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.
- (b) Designate a negotiator with requisite authority to engage in good-faith negotiations with the Union.
- (c) Reinstitute into the collective-bargaining negotiations the various proposals that had been tentatively agreed to by the Respondent and the Union, but which the Respondent subsequently withdrew.
- (d) Furnish the Union with the information it requested on January 23, 2001.
- (e) Rescind the field service manual distributed to unit employees on September 21, 2000, and the training agreement implemented on October 16, 2000.
- (f) On the Union's request, restore the health care program that was implemented on August 23, 2000, and discontinued on November 30, 2000.

- (g) Make unit employees whole for any losses they may have suffered as a result of its implementation of the training agreement on October 16, 2000, and its failure to maintain the health care program since November 30, 2000, as set forth in the remedy section of this decision.
- (h) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.
- (i) Within 14 days after service by the Region, post at its facility in Denver, Colorado, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 27, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 9, 2000.
- (j) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 13, 2001

| Peter J. Hurtgen,  | Chairman |
|--------------------|----------|
| John C. Truesdale, | Member   |
| Dennis P. Walsh,   | Member   |

# (SEAL) NATIONAL LABOR RELATIONS BOARD

<sup>&</sup>lt;sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

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## **APPENDIX**

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to bargain with United Government Security Officers of America, Local 50 as the exclusive collective-bargaining representative of the employees in the following unit:

All full-time and part-time security officers employed by us to provide protection/security services within the State of Colorado pursuant to or under General Service Administration (GSA) contracts; BUT EXCLUDING all managerial employees, professional employees, office clerical employees, supervisors as defined by the Act and all other employees.

WE WILL NOT fail and refuse to meet and bargain with the Union at reasonable times.

WE WILL NOT fail to designate a negotiator with requisite authority to engage in good-faith negotiations with the Union.

WE WILL NOT fail to furnish the Union with information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees.

WE WILL NOT withdraw bargaining proposals tentatively agreed to by us and the Union.

WE WILL NOT distribute to the unit employees a field service manual containing a code of conduct, a dress code, standing orders, disciplinary measures, and a grievance procedure, without prior notice to the Union and without affording the Union an opportunity to bargain with us with respect to this conduct and its effects.

WE WILL NOT implement a training agreement requiring new employees to agree to reimburse us the full costs of training if they were terminated or resigned within their first 6 months of employment, without prior notice to the Union and without affording the Union an oppor-

tunity to bargain with us with respect to this conduct and its effects.

WE WILL NOT discontinue our health care program which we implemented on about August 23, 2000, without prior notice to the Union and without affording the Union an opportunity to bargain with us with respect to this conduct and its effects.

WE WILL NOT bypass the Union and deal directly with our employees in the unit by soliciting them to enter into individual training agreements requiring new employees to agree to reimburse us the full costs of training if they were terminated or resigned within their first 6 months of employment.

WE WILL NOT tell employees that health care coverage offered to them was being dropped because of the Union.

WE WILL NOT interrogate employees about whether they were going to strike.

WE WILL NOT threaten employees with termination if they went on strike.

WE WILL NOT threaten employees with discharge by informing them that they must turn in their uniforms, equipment, and identification cards if they planned to go on strike.

WE WILL NOT induce employees to abandon the strike by telling them if they did not return to work their training agreements would be enforced and they would be required to pay us \$1500.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, meet and bargain at reasonable times with United Government Security Officers of America, Local 50 as the exclusive representative of the employees in the unit set forth above concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL designate a negotiator with requisite authority to engage in good-faith negotiations with the Union.

WE WILL reinstitute into the collective-bargaining negotiations the various proposals that had been tentatively agreed to by us and the Union, but which we withdrew during the period from August 28, 2000, to January 3, 2001.

WE WILL furnish the Union with the information it requested on January 23, 2001.

WE WILL rescind the field service manual distributed to unit employees on September 21, 2000, and the training agreement implemented on October 16, 2000.

WE WILL, on the Union's request, restore the health care program that was implemented on August 23, 2000, and discontinued on November 30, 2000.

WE WILL make unit employees whole for any losses they may have suffered as a result of our implementation of the training agreement on October 16, 2000, and our

failure to maintain the health care program since November 30, 2000, with interest.

AM-GARD, INC.